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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

In re:

CITY AND COUNTY OF SAN FRANCISCO,	)	No. 22-cv-01587-JSW
Contemnor.	)	
	)	MEMORANDUM OF POINTS AND
	)	AUTHORITIES IN SUPPORT OF EX
SELINA KEENE, et al.,	)	PARTE APPLICATION FOR AN ORDER
Plaintiffs,	)	TO SHOW CAUSE re: CONTEMPT
v.	)	
CITY AND COUNTY OF SAN FRANCISCO, et al.,	)	
Defendants.	)	
AND CONSOLIDATED CASES.	)	

STATEMENT OF FACTS

1. On April 28, 2023, the court ordered the parties to comply with General Order No. 71.

2. General Order No. 71 is clear and unambiguous.

3. General Order No. 71 requires the Contemnor to provide specified documents and information. (Exhibit A, pp. 3-6.)

1           4. The Contemnor failed to comply with General Order No.  
 2 71, and upon being called on this failure, persisted, and  
 3 continues to persist, in its refusal to comply. (See, Exhibit B;  
 4 and see, Dec. of H. Torbet, ¶¶ 7-12.)

5           This ex parte application for an order to show cause re:  
 6 contempt follows.

7                               ARGUMENT AND AUTHORITIES

8                               AN ORDER TO SHOW CAUSE IS WARRANTED

9           Contempt is an authorized remedy for a failure to comply  
 10 with an order to provide discovery. (Fed. R. Civ. P.  
 11 37(b)(2)(A)(vii).) Contempt is a remedial action with the  
 12 purpose of obtaining compliance with the order. (Food Lion, Inc.  
 13 v. United Food & Commercial Workers Int'l Union, 103 F.3d 1007,  
 14 1016-1018 (DC Cir. 1997).)

15           The elements of a (civil) contempt action are (1) there was  
 16 a clear and unambiguous order, (2) the order required certain  
 17 conduct by the alleged contemnor, and (3) the alleged contemnor  
 18 failed to comply with the order. (Static Media LLC v. Leader  
 19 Access. LLC, 38 F.4th 1042, 1045 (Fed. Cir. 2022).) Further, the  
 20 action must be proved by "clear and convincing" evidence, which  
 21 in this context means that quantum of proof which is adequate to  
 22 demonstrate to a reasonable certainty that a violation has  
 23 occurred. (Levin v. Tiber Holding Corp., 277 F.3d 243, 250 (2nd  
 24 Cir. 2002).) Notably, the aggrieved party is not required to  
 25 prove that the violation of the order was willful. (McComb v.  
 26 Jacksonville Paper Co., 336 U.S. 187, 191 (1949).)

27           The correct process by which to initiate a civil contempt  
 28 action is an order to show cause directed to the alleged

1 contemnor. (K.M. v. Tehachapi Unified Sch. Dist., No.  
2 117cv01431-LJO-JCT, 2020 WL 6145113, at 10 (E.D. Cal. Oct. 20,  
3 2020).) The aggrieved party's request for an order to show cause  
4 must make a prima facie case of contempt of court. (Eaconomy,  
5 LLC v. Auvoria Prime, LLC, 482 F.Supp.3d 1030, 1037 (E.D. Cal  
6 2020).)

7 In this case, all of the elements of an action for civil  
8 contempt of court are met. Moreover, the evidence which  
9 establishes these elements is clear and convincing as defined by  
10 the jurisprudence related to this process. Indeed, it is more  
11 than reasonably certain that the Contemnor failed to comply with  
12 General Order No. 71. It is indisputable. (See, e.g., Exhibit  
13 B.)

14 Accordingly, an order to show cause re: contempt should be  
15 issued so as to initiate a contempt proceeding against the  
16 Contemnor with the ultimate purpose of coercing The Contemnor's  
17 compliance with General Order No. 71.

18 Note: Mr. Cook does not seek, and will not request, any  
19 monetary relief in this action.

#### 20 CONCLUSION

21 One essential tenet of the American legal system is that  
22 everyone is equal in the eyes of the law. The court is a level  
23 playing field. An ancient phrasing of this is that "Where the  
24 reason is the same, the rule should be the same." (Cal. Civil  
25 Code § 3511 (1872).)

26 Mr. Cook complied with General Order No. 71 timely,  
27 completely, and without equivocation. He seeks nothing more, but  
28 ///

1 cannot accept anything less, of the Contemnor.

2 Dated: August 4, 2023

3 Respectfully submitted,  
4 s/ Hugo Torbet  
5 Attorney for Joseph Cook  
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